

**Filed 4/16/02 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2002 ND 57

State of North Dakota,

Plaintiff and Appellee

v.

Jeffrey Clark Vincent,

Defendant and Appellant

No. 20010218

Appeal from the District Court of Cass County, East Central Judicial District,
the Honorable Michael O. McGuire, Judge.

AFFIRMED.

Per Curiam.

Jonathan R. Byers, Assistant Attorney General, Attorney General's Office, 600
East Boulevard Avenue, Bismarck, N.D. 58505-0040, for plaintiff and appellee.

Monty G. Mertz, 1308 23rd Street South, P.O. Box 10396, Fargo, N.D.
58106-0396, for defendant and appellant.

State v. Vincent

No. 20010218

Per Curiam.

[¶1] Jeffrey Clark Vincent appeals from the district court's order denying his "Motion to Vacate Sentence or Appoint Counsel." Vincent argues: (1) he should be allowed to withdraw his 1995 guilty plea because it was not voluntary, (2) the search of his residence and business was illegal, (3) he did not know the conditions of his probation and did not violate the terms of his probation, (4) he should have been given court-appointed counsel, and (5) the State gave him immunity from prosecution for the actions used as a basis for his 1995 conviction.

[¶2] Vincent's challenge to the voluntariness of his guilty plea was raised in a previous motion to the district court, from which he did not appeal. See Owens v. State, 1998 ND 106, ¶ 42, 578 N.W.2d 542 (a trial court does not abuse its discretion when rejecting an argument that is a variation of a previously rejected claim). Vincent's challenge to the search of his business and residence and the challenge to the revocation of his probation were resolved in prior proceedings. See State v. Vincent, 1999 ND 22, 592 N.W.2d 923 (summarily affirming the revocation of Vincent's probation); United States v. Vincent, 167 F.3d 428, 431 (8th Cir. 1999) (concluding the warrantless probation search of Vincent's home was "reasonable and appropriate under the circumstances"). Vincent's other challenges are without merit and are precluded as a misuse of process. See State v. Johnson, 1997 ND 235, ¶¶ 11-13, 571 N.W.2d 372 (inexcusably failing to raise all claims in a single post-conviction proceeding is a misuse of process). We summarily affirm under N.D.R.App.P. 35.1(a)(1), (7).

[¶3] Gerald W. VandeWalle, C.J.
Dale V. Sandstrom
William A. Neumann
Mary Muehlen Maring
Carol Ronning Kapsner